

MF 96-11

Tax Type: MOTOR FUEL USE TAX

Issue: Reasonable Cause On Application Of Penalties Assessed

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	
v.	)	Docket #
	)	ACCT #
	)	BDN
TAXPAYER	)	
	)	
Taxpayer	)	

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RECOMMENDATION FOR DISPOSITION

Appearances: None

Synopsis:

The Department issued a Notice of Tax Liability to TAXPAYER (the "Taxpayer") for a late filing penalty for his motor fuel use tax return. The taxpayer protested the penalty and requested a hearing based upon the assertion that he had filed the return on time. It is recommended that the matter be resolved in favor of the taxpayer.

Findings of Fact:

1. The Department's prima facie case was established by the admission into evidence of Department's Exhibits 1 through 4.
2. The taxpayer is a trucking company that files motor fuel use tax returns with the Department on a quarterly basis. (Dept. Ex. No. 1)
3. The Department determined that the taxpayer had not filed the return for the second quarter of 1994 in a timely manner and assessed a \$50.00 penalty. (Dept. Ex. 1)

4. The taxpayer asserts that he in fact filed the return in a timely manner. (Dept. Ex. Nos. 2 and 4; Tr. pp. 10-13)

5. The taxpayer produced a copy of a motor fuel user tax quarterly return signed by the taxpayer, dated July 22, 1994, showing that \$0.00 of tax was due for that quarter. (Dept. Ex. No. 4)

Conclusions of Law:

At issue to be decided herein is whether the taxpayer was liable for a \$50.00 late filing penalty for failure to submit his second quarter, 1994, motor fuel use tax return. In the Motor Fuel Use Tax Act, 35 ILCS 505/1 et. seq. the legislature has required at 35 **ILCS** 505/13a.3, that:

Every person holding a valid unrevoked motor fuel use tax license ... shall, on or before the last day of the month next succeeding any calendar quarter, file with the Department a report ... setting forth a statement of the number of miles traveled in every jurisdiction and in this State during the previous calendar quarter, the number of gallons and type of reportable motor fuel consumed on the highways of every jurisdiction and of this State, and the total number of gallons and types of tax paid fuel purchased within every jurisdiction during said previous calendar quarter....

Reports not filed by the due date shall be considered late and any taxes due considered delinquent. The licensee may be assessed a penalty of \$50.00 or 10 % of the delinquent taxes, whichever is greater, for failure to file a report, or for filing a late report, or for underpayment of taxes due.

The Statute on Statutes at 5 **ILCS** 70/1.25 is pertinent to the issue presented herein. It states that any writing required to be paid to the State, if mailed but not timely received by the State, is deemed filed or received if such fact is established by competent evidence.

I find the testimony and the evidence of the taxpayer credible. I admire the fact that he gave up a half-day of work to come to the hearing from Danville, Illinois because as he stated "I'm not here trying to save the \$50.00. I'm here because I'm not guilty of what I'm being charged with. That's basically, I guess, all I have to say about it." (Tr. p. 13)

I find that the taxpayer has established through credible testimony and related documents that he submitted the required return in a timely manner on either July 22 or 23, 1994.

It is therefore recommended that the Director of the Department of Revenue cancel the Notice of Tax Liability batch document number XXXXX issued to the taxpayer herein.

Respectfully Submitted,

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Barbara S. Rowe  
Administrative Law Judge

July 3, 1996